IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO.1317 OF 2003

Shri.Datta Shekappa Jadhav]
Age 23, r/o Settlement Free]
Colony No.6, Solapur.]
At present in Solapur Jail.]..Appellant

Vs.

The State of Maharashtra]..Respondent
(Ori.Complainant)

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Mr.P.R.Arjunwadkar Advocate for Appellant
Mr.V.B.Konde-Deshmukh APP for State

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CORAM: R.M.S.KHANDEPARKAR, AND
SMT.V.K.TAHILRAMANI, JJ.

DATE : AUGUST 06, 2007

ORAL JUDGMENT [PER SMT.V.K.TAHILRAMANI, J.]:

1. Through this appeal, the appellant- original accused has challenged the judgment and order dated 13th October, 2003 passed by the learned VIth Additional Sessions Judge, Solapur in Sessions Case No.43 of 2003. By the said judgment and order, the learned Sessions Judge convicted the appellant

under Section 302 of IPC and sentenced him to imprisonment for life and fine of Rs.5,000/- i/d R.I. for one year.

2. The prosecution case briefly stated is as under:

. Accused No.1 was the husband of deceased Dimple. Dimple was married on 9th December, 2001 to the appellant. Soon thereafter, the appellant and his parents started harassing Dimple. Thereafter, father of Dimple arranged for a separate residence for appellant and Dimple. Thereafter, appellant and Dimple started residing separately. Even thereafter, the appellant used to demand amounts from Dimple and on that count, he used to illtreat her. The appellant was also insisting that Dimple should come and reside with his parents. There were frequent quarrels between the appellant and Dimple. On the day of incident i.e. on 17th July, 2002 there was quarrel between the appellant and Dimple. At about 10 a.m. in the morning, P.W.4 Sidharam Gaikwad the father of Dimple and her mother had gone to the house of the appellant to convince the appellant. That time, Dimple started

crying and informed them that quarrel took place between her and appellant as the appellant used to go one day for work and on the next day, he did not work. Dimple told them that there is danger to her at the hands of appellant, however, the appellant told all of them that he will not cause any harm to Dimple, hence, they went away. Thereafter, at about 2.30 p.m. the appellant poured kerosene on Dimple and set her on fire. She raised shouts, whereupon the neighbours came to the scene. On seeing the neighbours, the appellant started extinguishing the fire. Thereafter, Dimple was taken to hospital. P.W.6 Dr. Jadhav examined Dimple. He found that Dimple sustained 69% burn injuries. Thereafter, the dying declaration (Exhibit 22) of Dimple came to be recorded by P.W.5 Police Head Constable Rathod. This was recorded at about 6 p.m. Thereafter, Special Executive Magistrate P.W.3 Afzalpurkar recorded dying declaration (Exhibit 18) of Dimple. Before recording the dying declarations, both P.W. 3 Afzalpurkar and P.W. 5 Rathod, obtained the opinion of the Doctor and took endorsement thereon that the patient was conscious and fit to give statement. In both the dying declarations, Dimple

has stated that there were quarrels between her and appellant and on the day of the incident also there was quarrel between them. She stated that thereafter, the appellant poured kerosene on her and set her on fire. Dimple expired on 19th July, 2002. After investigation was complete, the charge-sheet came to be filed. In due course, the case was committed to the Court of Sessions.

3. Charge came to be framed against the appellant and two other accused i.e. his parents for the offence under Sections 304-B, 498A, 323, 506, 504 and 302 read with Section 34 of IPC. The accused pleaded not guilty to the said charge and claimed to be tried. From the record the defence appears to be that there was flare-up of the stove due to which Dimple caught fire and sustained burn injuries. After going through the evidence adduced by the prosecution, the learned Judge acquitted his parents of all the charges and convicted and sentenced the appellant as stated in paragraph 1 above. Hence, this appeal.

4. We have heard Mr.Arjunwadkar, the learned advocate for the appellant and

Mr.V.B.Konde-Deshmukh, the learned APP for the State. We have also perused the judgment and order passed by the learned Sessions Judge as well as record pertaining to the present case. After carefully considering the above matter, we are of the opinion that this appeal deserves to be dismissed.

5. So far as the involvement of the appellant in the incident is concerned, we are satisfied that it has been established through the dying declarations (Exhibits 18 and 22) given by Dimple. In the said dying declarations, Dimple has stated that she was married on 9th December, 2001 to the appellant. Soon thereafter, the appellant and his parents started harassing her. Thereafter, her father arranged for a separate residence for her and the appellant and Dimple started residing separately. Even thereafter, the appellant used to demand amounts from Dimple and on that count, he used to ill-treat her. The appellant was also insisting that Dimple should come and reside with his parents. There were frequent quarrels between the appellant and Dimple. She has further stated that on the day of incident i.e. on 17th July, 2002

there was quarrel between the appellant and Dimple. At about 10 a.m. in the morning, P.W.4 Sidharam Gaikwad the father of Dimple and her mother had gone to the house of the appellant to convince the appellant. That time, Dimple started crying and informed them that quarrel took place between her and appellant as the appellant used to go to work for a day and on the next day, he did not go to work. Dimple told them that there is danger at the hands of appellant to her, however, the appellant told all of them that he will not do any such thing. However, thereafter, at about 2.30 p.m. the appellant poured kerosene on Dimple and set her on fire. She raised shouts, whereupon the neighbours came to the spot. On seeing the neighbours, the appellant started extinguishing the fire. Thereafter, Dimple was taken to hospital. P.W.6 Dr. Jadhav examined Dimple. He found that Dimple had sustained 69% burn injuries. Thereafter, the dying declaration (Exhibit 22) of Dimple came to be recorded by P.W.5 Police Head Constable Rathod. This was recorded at about 6 p.m. Thereafter, Special Executive Magistrate P.W.3 Afzalpurkar recorded dying declaration (Exhibit 18) of Dimple. Before recording the dying

declarations, both P.W. 3 Afzalpurkar and P.W. 5 Rathod obtained the opinion of the Doctor and took endorsement thereon that the patient was conscious and fit to give a statement. In both the dying declarations, Dimple has stated that there were quarrels between her and appellant and on the day of the incident also there was quarrel between them and the appellant poured kerosene on her and set her on fire. Both the dying declarations are consistent. The dying declaration (Exhibit-22) was recorded by P.W.5 Police Head Constable Rathod. Before recording the said dying declaration, he has obtained endorsement from the Doctor that Dimple was conscious and in a fit condition to give her statement. P.W.6 Dr.Jadhav has stated that he examined the patient and then told P.W.5 Rathod to record dying declaration. Dr.Jadhav has categorically stated that dying declaration (Exhibit-22) bears his endorsement that the patient is conscious, oriented and fit to make a statement. It has come on record that the relatives were asked to go outside and thereafter, dying declaration was recorded in the presence of Doctor. Thereafter, the Doctor again examined Dimple and gave endorsement that she was conscious and fit to make

a statement.

6. The S.E.M. P.W.3 Afzalpurkar recorded the second dying declaration of Dimple. He has categorically stated that dying declaration (Exhibit-18) bears endorsement that the patient is conscious, oriented and fit to make a statement. The same facts have been stated by Dimple to this witness as were stated by her in her earlier dying declaration recorded by P.W.5 Rathod.

7. This case is mainly dependent on the dying declarations made by Dimple. The other witnesses in this case have turned hostile. However, though P.W.4 Sidharam Gaikwad who is the father of Dimple has turned hostile, it is pertinent to note his evidence. He has stated that it is true that the appellant used to demand amounts from Dimple and on that count, Dimple was illtreated. Sidharam Gaikwad has further stated that due to frustration, he had given assurance to the appellant that he will arrange for a separate residence if the appellant is willing to work. Sidharam has further stated that on the day of the incident at about 10 a.m. in the morning he along with his wife had

gone to the house of the appellant and had given understanding to him. When they reached the house of the appellant, Dimple started crying. On enquiry, Dimple told them that quarrel had taken place between her and the appellant because appellant went for work on one day and on the next day, he did not go to work. Dimple also told them that she apprehended danger at the hands of the appellant. However, appellant assured them that he will not do anything. Thereafter, Dimple came to be burnt.

8. As far as the defence of the appellant is concerned that Dimple sustained burn injuries on account of flare-up of stove, we find that the clothes of the accused and clothes of the deceased which came to be seized, were sent to C.A. The C.A. report (Exhibit-40) clearly shows that not only clothes of the deceased but the clothes of the appellant also had kerosene traces on them. So also the other articles which were found at the spot also bear traces of kerosene. The finding of kerosene on the clothes of the accused, deceased and other articles found from the place of incident, clearly belie the defence of the accused

that Dimple sustained burn injuries on account of flare-up of stove.

9. As far as the defence of the appellant is concerned, the conduct of the appellant belies his defence. Had it been a case of burns sustained on account of flare-up of stove, the appellant would have immediately made attempts to extinguish the fire. However, Dimple in her dying declaration has categorically stated that only when she raised shouts and the neighbours reached the spot, thereafter, the appellant started to extinguish the fire. On account of the above two circumstances, we have no hesitation in arriving at the conclusion that burn injuries were caused on account of the accused pouring kerosene on Dimple and thereafter setting her on fire.

10. Thereafter, Mr.Arjunwadkar submitted that the first dying declaration (Exhibit-22) recorded by P.W.5 Police Head Constable Rathod is a concocted and created document and hence, it cannot be relied upon. In support of his above contention, Mr.Arjunwadkar submitted that the dying declaration Exh.22 was recorded first in point of time and the

dying declaration (Exhibit-18) was recorded by Special Executive Magistrate P.W.3 Afzalpurkar later in point of time, however, though P.W.5 Rathod has specifically stated that Dimple had put her right thumb impression on the dying declaration (Exhibit-22), the S.E.M. P.W.3 Afzalpurkar in his evidence has stated that he did not find any ink on the right thumb of Dimple. Mr.Arjunwadkar submitted that if right thumb impression of the Dimple was already taken on Exhibit-22, there ought to have been ink on the right thumb of Dimple when the second dying declaration (Exhibit-18) came to be recorded and had there been ink on the right thumb, S.E.M. P.W.3 would have noticed the ink. Thus, Mr.Arjunwadkar submitted that first dying declaration is clearly a concocted one and has been prepared lateron to falsely implicate the appellant. As far as this aspect is concerned, it is pertinent to note that P.W.6 Dr.Jadhav has clearly stated in his evidence that he had given endorsement on both the dying declarations. P.W.6 Dr.Jadhav is an independent witness. There is no reason for him to falsely implicate the appellant.

11. Mr.Arjunwadkar has further submitted one other

reason that the dying declaration Exhibit-22 recorded by P.W.5 Police Head Constable Rathod cannot be relied upon that is the dying declaration is not actually written by P.W.5 Rathod but it was written by some other person. As far as this aspect is concerned, P.W.5 Rathod has nowhere stated that he himself wrote the dying declaration but he has stated that he has recorded the dying declaration. It is not necessary that the person who records the dying declaration should himself scribe the same. The person who gets recorded the dying declaration, can get it scribed through another person. Hence, even though the dying declaration Exhibit-22 is not in the handwriting of P.W.5 Police Head Constable Rathod, that would not affect the veracity of the dying declaration or its reliability. There is no law which lays down that the person who records the dying declaration has to scribe the same himself. Hence, we find no merit in this submission.

12. Thereafter, Mr.Arjunwadkar submitted that Dimple had sustained 69% burn injuries. He further submitted that if Dimple had sustained 69% burn injuries, she could not be in a position to give

her dying declaration. In connection with this contention, it would be pertinent to note the evidence of P.W.6 Dr.Jadhav who has stated that he examined Dimple before both the dying declarations Exhibits-22 and 18 were recorded and gave endorsements stating that Dimple was conscious and in a fit state to give her dying declarations. The endorsements are very much on record on both the dying declarations. In this view of the matter, we find no substance in the submission that Dimple could not have been in a position to give her dying declaration, though Dimple had sustained 69% burn injuries. We have noticed in cases where even the victim sustained 99% burn injuries, the victim has been able to give dying declaration. Moreover, the medical papers Exhibit-29 show that when Dimple was examined at 6.15 p.m., all her parameters were normal i.e. blood-pressure, pulse etc. were normal. This clearly shows that Dimple was in a position to give her dying declaration.

13. We find that lacunae which have been pointed out by Mr.Arjunwadkar in respect of dying declaration Exhibit-22 are not so material as to affect the said dying declaration. Even assuming

that the dying declaration (Exhibit-22) is excluded from consideration, the other dying declaration (Exhibit-18) still remains. No infirmity has been pointed out in respect of the said dying declaration and we have no hesitation in relying on the same.

14. As far as both the dying declarations are concerned, Mr.Arjunwadkar contended that the second dying declaration does not corroborate the first dying declaration in respect of the role of the appellant. We have perused the dying declarations and we find that the dying declarations are consistent on all the material aspects. Both the dying declarations clearly implicate the appellant. Thereafter, Mr.Arjunwadkar submitted that as far as Exhibit-27 is concerned, there is overwriting in the timing i.e. 6.00 p.m. has been altered to 6.30 p.m. He submitted that as the dying declarations were concocted lateron to adjust the timing, there is overwriting in the timings. As far as overwriting of timing is concerned, the evidence of P.W.6 Dr.Jadhav especially in paragraph 4 of his evidence, provides an explanation for the same. In any event, if the time was 6 p.m. or

6.30 p.m. it would not affect the prosecution case in any manner.

15. After perusing the entire evidence, we are satisfied that the involvement of the appellant has been sufficiently established. Hence, we see no reason to interfere with the findings recorded by the learned Additional Sessions Judge thereby convicting the appellant.

16. Appeal is, therefore, dismissed. Judgment and Order dated 13th October, 2003 delivered by VIth Additional Sessions Judge, Solapur in Sessions Case No. 43 of 2003 thereby convicting appellant for the offence punishable under Section of 302 IPC is confirmed. He is in jail. He shall serve out the sentence.

[R.M.S.KHANDEPARKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]